

1986

Susan Woodard Fields, The State of Utah, Department of Social Services v. Carlos Leon Fields : Brief of Appellant

Utah Supreme Court

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Gayle Dean Hunt; Attorney for Defendant.

Ted Cannon; Salt Lake County Attorney; Sandy Mooy; Deputy County Attorney; David L.

Wilkinson; Attorney General; Bernard M. Tanner; Assistant Attorney General.

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BRIEF

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DOCKET NO. 860305 ~~IN THE~~ SUPREME COURT
STATE OF UTAH

SUSAN WOODWARD FIELDS and)
THE STATE OF UTAH by and through
its DEPARTMENT OF SOCIAL SERVICES,))

Plaintiffs,)
vs.)

CARLOS LEON FIELDS,)
Defendant.)

860305-CA
CASE NO. 20576
(District Court No.
D-13163)

Brief of Defendant-Appellant

Appeal by Defendant from Final Order of Third Judicial
District Court of Salt Lake County, Hon. J. Dennis Frederick, Jud

GAYLE DEAN HUNT
Attorney for Defendant
2121 South State Street
Salt Lake City, Utah 84111
Telephone: (801) 486-8701

TED CANON
Salt Lake County Attorney
SANDY MOOY
Deputy County Attorney
231 East 400 South, Suite 400
Salt Lake City, Utah 84111
Telephone: (801) 363-7900

DAVID L. WILKINSON
Attorney General
BERNARD M. TANNER
Assistant Attorney General
State Capitol Building
Salt Lake City, Utah 84114
Telephone: 533-5261

FILED

AUG 13 1985

Clerk, Supreme Court, Utah

SUSAN WOODWARD FIELDS and)
THE STATE OF UTAH by and through
its DEPARTMENT OF SOCIAL SERVICES,)

Plaintiffs,)
vs.)

CARLOS LEON FIELDS,
Defendant.

Appeal by Defendant from Final Order of Third Judicial
District Court of Salt Lake County, Hon. J. Dennis Frederick, Jud

TED CANON
Salt Lake County Attorney
SANDY MOOY
Deputy County Attorney
231 East 400 South, Suite 400
Salt Lake City, Utah 84111
Telephone: (801) 363-7900

DAVID L. WILKINSON
Attorney General
BERNARD M. TANNER
Assistant Attorney General
State Capitol Building
Salt Lake City, Utah 84114
Telephone: 533-5261

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STATEMENT OF NATURE OF PROCEEDING

This is an appeal filed March 28, 1985 from Final Order dated 3-1-85, (T185), Hon. J. Dennis Frederick, Third Judicial District Judge, denying Defendant Fields' Motion for Writ of Error Coram Nobis (T70), seeking to overturn Order dated 8-13-78 (T27), ordering child support, Hon. Stuart Hanson, Sr., notwithstanding Divorce Decree dated 5-7-74, (T12), Hon. Marcellus K. Snow, terminating parental rights and terminating parental duties.

STATEMENT OF ISSUES PRESENTED ON APPEAL

Issues presented are as follows:

1. Whether the Divorce Decree awarding

"...no alimony or child support...past,
present, or future..."; and ordering Defendant to

"...give up all right or claim he may have
to the expected child..."

terminates Defendant Father's -

a. rights; and

b. obligations including support.

2. Whether the Court had jurisdiction to Order support
in view of said Decree.

3. Whether Defendant, without Counsel, though having
engaged, or thought he had engaged, Legal Aid Society or Legal
Services, neither of which entered the case, was effectively
Defaulted at Hearing on Order to Show Cause for Modification.

4. Whether Defendant in this case has a remedy by
Motion for Writ of Error in nature of Coram Nobis.

STATEMENT OF FACTS

On May 7, 1974, a Divorce Decree was granted, the Court ordering -

...

IT IS FURTHER ORDERED that the Court awards no alimony or child support from the Defendant past, present, or future.

IT IS FURTHER ORDERED that the Defendant be and he hereby is required to give up any right or claim he may have to the expected child and grant irrevocably his consent to the child's adoption by another party.

...

June 27, 1978, the State of Utah Social Services sought to modify the Decree to require support; served Defendant out of State with Order to Show Cause, T85; and in his absence (see his Verified Motion, T72, wherein he states efforts to obtain Counsel T97, T100, T103, T108, T191), obtained an Order dated August 23, 1978 ordering support, back support, and future support, T86.

In 1982, Defendant, under Garnishment, paid some \$2,000 and sought Counsel.

February 16, 1984, Defendant brought Motion for Writ of Error in nature of Coram Nobis, T70.

The same was heard by a Commissioner with recommendation to deny same, T135.

The recommendations were rejected by Defendant and the case Noticed and re-heard 7-26-84 and the Motion granted and an Order entered 7-30-84, T128, decreeing the support Order in error but vacated 1-14-85, the County Attorney alleging lack of Notice. Motion to Vacate and Motion For Writ of Error re-heard and denied with Order filed 3-1-85, T185, ruling that the Commissioner's report and recommendations 5-9-84 (T135) be affirmed; i.e. that Defendant still had a parental duty of support.

SUMMARY OF ARGUMENT

The Court, in May 1974, entered a firm decree terminating parental duties, specifically awarding "...no child support from the defendant, past, present, or future...".

The decree is in plain words and unequivocal.

There were no conditions.

There was a hearing backed with Stipulation and Findings

All parties, Court, and Counsel obviously intended the situation created, a complete severance of parental relationship.

Defendant relied on the process, on the Court, on the system; changed his position; and lived with the result.

It is disquieting for the Sovereign, 4 years later, to deny its judicial mandate and consonant with judicial repose and reliability to accord the Divorce Decree its proported and manifest intended meaning.

ARGUMENT

The State's position rests largely on the HILLS vs. HILLS case, October 1981, Utah 638 Pac 2d 516, holding that -

- a. Parents' Stipulation at time of divorce for no support did not terminate Father's parental obligations; and
- b. Termination of parental duties cannot be validly decreed without hearing, evidence, etc

In the case, the parties Stipulated concerning parental rights, etc., the Stipulation was inserted in the Decree and the Decree made no provisions for child support.

However, the Stipulation did not really terminate parent rights providing in part, page 516 -

That Ronald Eugene Hills wishes to relinquish all rights in regard to the above-named children and that he should be deprived of all parental rights and obligations in regard to said children except in the event that (Lorrie Patricia Hills) dies during the minority of either of said children or for any reason loses custody of either or both of the above-named children, (Ronald Eugene Hills) shall be given preference as guardian.

One month after the Divorce Decree, the Court went back and amended the Decree requiring support.

The case is not only distinguishable, but inapplicable because -

- a. The Stipulation did not terminate rights, in fact quite the opposite, providing for reversion of custody to the father in event of change of custody;
- b. There had been no hearing on the question;
- c. The Decree was accomplished by Stipulation simply incorporated into the Decree; the Court noting -
"....there was no such hearing..."
- d. By intimation, that there was a lack of -

"careful judicial consideration of all of the interests involved..."

In the instant case, the Fields case, the Court made the determination, not the parties, there was a hearing, there was no "reversion" of custody as in the HILLS case; there was what appeared to be a hard and fast not only severance but denial of parental rights (text of HILLS, T161).

Defendant (Father) relies in part upon recent case, Nevada Welfare Division vs. Vine, 662 Pac 2d 295 (Nevada 1983), (text, T163), U.S. Supreme Court 83-97 Certiorari denied 11-8-83 (T168). Certiorari was sought by the Welfare Department from Nevada Supreme Court decision which ruled under similar URESA action that, as summarized in headnote -

Order terminating former husband's parental rights also completely extinguished all of his legal duties and responsibilities with respect to his daughter and thus the State had no basis for its action against him under the Revised Uniform Reciprocal Enforcement of Support Act (NRS 128.110)'.

That case was even weaker for the State of Nevada than the instant Fields case for the State of Utah.

In that case, the Nevada case, by Divorce Decree 8-26-74, custody was awarded to wife and the Father ordered to pay \$50.00 per month support; and 7-15-75 (a year later) an Order was made, page 296 -

The Judge decreed that "all parental rights of John Michael Vine, with respect to Amanda Leigh Vine, be, and they are hereby terminated and said child is declared free from any and all custody and control of said John Michael Vine." Martha Jo Vine received sole parental rights over her daughter.

6-12-81, 6 years after the divorce, the State of Nevada filed under the Revised Uniform Reciprocal Enforcement of Support Act seeking alleged past and future support.

In defense, John Vine produced the decree; the URESA

action was dismissed; the State appealed; Defendant husband sought clarification of the divorce Court wording; was sustained, the lower Court according the the Supreme Court, page 296 -

...
Judge Guy denied the State's motion to intervene. He specifically found that, at the time the order terminating parental rights was entered, all parties and the court understood and intended that the order would terminate in all respects the parental relationship between John Vine and Amanda Vine, including the former's obligation of support. The appeal in Case No. 14264 followed, and as eventually consolidated with Case No. 13727.

...

Bearing on Fields' claim of reliance and change of position (T71, T72), the Nevada Court, page 298, noted -

...
Moreover, the district judge specifically found that the court and the parties had intended the order, at the time it was entered, to eliminate all of John Vine's parental rights and obligations, including the obligation of child support.

...

As to the purpose of the Uniform Reciprocal Enforcement of Support Act, the Nevada Court, page 298, noted -

...
The purpose of the Revised Uniform Reciprocal Enforcement of Support Act (RURESA) is to improve and extend the enforcement of existing duties of support against persons presently legally liable for such support. Moffat vs. Moffat, 27 Cal. 3d 645, 165 Cal Rptr 877, 612 P 2d 967, 975 (Cal 1980). See State ex rel. Welfare Div v. Hudson, 97 Nev 386, 389, 632 P 2d 1148, 1149 (1981).

...

The Nevada case quoted Roelfs vs. Walingford, (Kan., 1948 6 Pac 2d 1371, on a statute similar to NRS 128.110 where the Kansas Supreme Court upheld the lower Court's cutting off all, not only "rights" but "obligations", page 297 -

...
the court determined that an order terminating parental rights under the statute also cut off all parental obligations, including the obligation of support. See In Interest of Ingold,

4 Kan App 2d 692, 610 P 2d 130
(Kan App 1980); In Interest of Wheller,
3 Kan App 2d 701, 601 P 2d 15 (Kan App
1979). We find the reasoning in Roelfs
persuasive.

...

The Nevada Supreme Court stated by way of explanation,
page 297-8, that -

...

We believe that these various statutory provisions adequately demonstrate the legislative intention to have an order terminating parental rights completely sever the parent-child relationship, terminating all rights and obligations of both parent and child. Complete severance of the relationship removes all connections which may otherwise engender feelings of continuing attachment or right, and gives the child an unrestrained opportunity to prepare for a new home environment. We therefore adopt the position of the court in Anguis v. Superior Court, 6 Ariz App 68, 429 P 2d (Ariz App 1967), as follows:...

We construe the term "parental rights" in the broader term as the sum total of the rights of the parent or parents in and to the child as well as the rights of the child in and to the parent or parents. In other words, we construe parental rights to include both parental rights and parental obligations.

...

CONCLUSION

In conclusion, the Divorce Decree was unequivocal, decisive, and clear; was arrived at with documents, agreements, and hearing; and should be upheld as manifestly intended, relied on, and lived with.

If the URESA action is potentially in error, as it appears from the cases including that cited from the U.S. Supreme Court; and the District Court in error by its sanction, involving as it does the inviolability not only of parental and children's rights, but of judicial decree credibility; then deterrence from correction ought not be found in the technicalities of Appellant's failure to appear while out of State despite his efforts to obtain pro bona Counsel, or in Garnishment induced consent to wage assignment, or in abortive previous attempts at remedy and appeal.

We believe this Court should uphold the Divorce Decree as written, and should nullify, under Coram Nobis principles, the Orders inverting that Decree.

Dated this 8th day of August, 1985.

RESPECTFULLY SUBMITTED,



GAYLE DEAN HUNT

Attorney for Defendant
2121 South State Street
Salt Lake City, Utah 84115
Telephone: (801) 486-8701

IN THE SUPREME COURT
STATE OF UTAH

SUSAN WOODWARD FIELDS and)
THE STATE OF UTAH by and through)
its DEPARTMENT OF SOCIAL SERVICES,)

CASE NO. 20576

Plaintiffs,)

vs.)

(District Court No.
D-13163)

CARLOS LEON FIELDS,)
Defendant.)

Brief of Defendant-Appellant

Appeal by Defendant from Final Order of Third Judicial
District Court of Salt Lake County, Hon. J. Dennis Frederick, Judge

GAYLE DEAN HUNT
Attorney for Defendant
2121 South State Street
Salt Lake City, Utah 84111
Telephone: 486-8701

I mailed/delivered ⁴/₁₃ copy of the
foregoing on August 8, 1985 to the
following:

TED CANON
Salt Lake County Attorney
SANDY MOOY
Deputy County Attorney
231 East 400 South, Suite 400
Salt Lake City, Utah 84101
Telephone: 363-7900

DAVID L. WILKINSON
Attorney General
BERNARD M. TANNER
Assistant Attorney General
State Capitol Building
Salt Lake City, Utah 84114
Telephone: 533-5261

SUSAN WOODWARD FIELDS and)
THE STATE OF UTAH by and through
its DEPARTMENT OF SOCIAL SERVICES,)

Plaintiffs,)
vs.)
CARLOS LEON FIELDS,)
Defendant.)

DAVID L. WILKINSON
Attorney General
BERNARD M. TANNER
Assistant Attorney General
State Capitol Building
Salt Lake City, Utah 84114
Telephone: 533-5261

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WILLIAM K. REAGAN
Attorney for Plaintiff
1550 South West Temple
Salt Lake City, Utah 84115
Telephone: 487-4158

Ed Seamon

IN THE THIRD JUDICIAL DISTRICT COURT, IN AND FOR SALT LAKE COUNTY
STATE OF UTAH

SUSAN WOODWARD FIELDS,)	
Plaintiff,)	<u>AMENDED COMPLAINT FOR DIVORCE</u>
vs.)	
CARLOS LEON FIELDS,)	No. D 13163
Defendant.)	

Plaintiff complains of the defendant, and for cause of action alleges:

1. That plaintiff now is and for more than three months next prior to the commencement of this action has been an actual and bona fide resident of Salt Lake County, Utah.
2. That plaintiff and defendant were married to each other in Salt Lake County, State of Utah, on October 21, 1973 and ever since have been and now are husband and wife.
3. That at the present time plaintiff is approximately four months pregnant; and is a fit and proper person to have the custody and control of the minor child.
4. That the defendant has been guilty of cruel treatment of the plaintiff to the extent of causing her great mental distress.
5. That the parties have acquired no real property during their marriage and have incurred no bills or obligations as husband and wife. That all personal property has been equitably distributed between the parties.
6. That the plaintiff has employed William K. Reagan, Esquire, to represent her in this action.
7. That the plaintiff desires no alimony or child support from the defendant past, present or future.
8. That the plaintiff desires the defendant to give up any right or claim he may have to the expected child and grant irrevocably his consent to the child's adoption by another party.

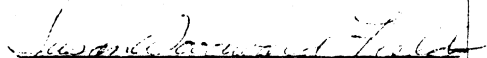
WILLIAM K. REAGAN
Attorney at Law
1550 South West Temple
Salt Lake City, Utah 84115
Telephone: 487-4158 or 487-4159

WHEREFORE, plaintiff prays:

1. For a decree of divorce.
2. For the absolute care, custody and control of the expected child.
3. That the plaintiff hereby waives any and all right for alimony and child support from the defendant past, present and future.
4. That the defendant be required to pay for all attorney's fees and costs incurred in this action.
5. That the defendant be required to give up any right or claim he has or may have to the expected child and that he be required to grant irrevocably his consent to the expected child's adoption by another party.
6. For such other and further relief as the court deems just and proper in the premises.

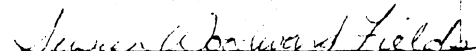
DATED this 15 day of March, 1974.


WILLIAM K. REAGAN
Attorney for Plaintiff



PLAINTIFF

STATE OF UTAH)
) SS.
COUNTY OF SALT LAKE)

SUSAN WOODWARD FIELDS, being first duly sworn, deposes and says:
That she is the plaintiff above named, that she has read the foregoing Complaint knows the contents thereof and that the same is true of her own knowledge, except as to matters therein stated on information and belief, and as to those matters, she believes it to be true.


PLAINTIFF

SUBSCRIBED AND SWORN to before me this 15 day of March, 1974.


NOTARY PUBLIC
Residing at:

My Commission Expires:

12/10/74

WILLIAM K. REAGAN
Attorney for Plaintiff
1550 South West Temple
Salt Lake City, Utah 84115
487-4158

MAY 7 1974

W. Stirling Young & Co. Ltd. 60, Collyer Quay
Ed. Glendon

IN THE THIRD JUDICIAL DISTRICT COURT, IN AND FOR SALT LAKE COUNTY
STATE OF UTAH

SUSAN WOODWARD FIELDS,
Plaintiff,

1) BK 129 No 1163
5.9.74 9.30 AM

2) DECREE

VS.

CARLOS LEON FIELDS,
Defendant.

Civil No. D 13163

The above-entitled action came on regularly for hearing on the 30th day of April, 1974, before the Honorable Marcellus K. Snow, one of the Judges of the above-entitled Court, sitting without a jury, William K. Reagan appearing as counsel for the plaintiff and the plaintiff appearing in person, and the defendant not appearing in person or by counsel and having filed his Appearance, Waiver and Consent and his default having been duly entered and his default for failure to answer or otherwise plead to plaintiff's complaint having been duly and regularly entered because of such failure, and the Court having heard the evidence introduced in behalf of the plaintiff, and having considered a Stipulation entered into by the parties, and the matter being submitted to the Court for its decision, and the Court being fully advised in the premises, and having heretofore made and entered its Findings of Fact and Conclusions of Law in writing, now, therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that a decree of divorce be and the same is hereby entered in favor of the plaintiff and against the defendant, PROVIDED, that this decree shall not become absolute until the expiration of three (3) months from the date of the entry thereof.

IT IS FURTHER ORDERED that the parties have acquired no real property during their marriage and have incurred no bills or obligations as husband and wife. That all personal property has been equitably distributed between the parties.

IT IS FURTHER ORDERED that the plaintiff has employed William K. Reagan, Esquire, to represent her in this action.

WILLIAM K. REAGAN
Attorney at Law
1550 South West Temple
Salt Lake City, Utah 84115
Telephone. 487-4158 or 487-4159


IT IS FURTHER ORDERED that the Court awards no alimony or child support from the defendant past, present or future.

IT IS FURTHER ORDERED the defendant be and he hereby is required to give up any right or claim he may have to the expected child and grant irrevocably his consent to the child's adoption by another party.

IT IS FURTHER ORDERED that the defendant be and he hereby is required to pay for all attorney's fees and costs incurred in this action in the sum of \$300.00.

DATED this ____ day of May, 1974.

BY THE COURT:


DISTRICT COURT JUDGE

ATTEST

W STERLING HWANG

CLERK

BY 

WILLIAM K. REAGAN
Attorney for Plaintiff
1550 South West Temple
Salt Lake City, Utah 84115
487-4158

Salt Lake City, Utah

MAY 7 1974

W. CLIFFORD L. JONES, District Court

Ed Seamon

IN THE THIRD JUDICIAL DISTRICT COURT, IN AND FOR SALT LAKE COUNTY
STATE OF UTAH

SUSAN WOODWARD FIELDS,)	
Plaintiff,)	FINDINGS OF FACT AND
vs.)	<u>CONCLUSIONS OF LAW</u>
CARLOS LEON FIELDS,)	
Defendant.)	Civil No. D 13163

The above-entitled action came on regularly for hearing on the 30th day of April, 1974, before the Honorable Marcellus K. Snow, one of the Judge of the above entitled Court, sitting without a jury, William K. Reagan appearing as counsel for the plaintiff and the plaintiff appearing in person, and the defendant not appearing in person or by counsel and having filed his Appearance, Waiver and Consent and his default having been duly entered and his default for failure to answer or otherwise plead to plaintiff's complaint having been duly and regularly entered because of such failure, and the Court having heard the evidence introduced in behalf of the plaintiff, and having considered a Stipulation entered into by the parties, and the matter being submitted to the Court for its decision, and the Court being fully advised in the premises, now makes and files the following:

FINDINGS OF FACT

1. That plaintiff now is and for more than three months next prior to the commencement of this action has been an actual and bona fide resident of Salt Lake County, Utah.
2. That plaintiff and defendant were married to each other in Salt Lake County, State of Utah, on October 21, 1973 and ever since have been and now are husband and wife.
3. That at the present time plaintiff is approximately five months pregnant; and is a fit and proper person to have the custody and control of the minor child.
4. That the defendant has been guilty of cruel treatment of the

WILLIAM K. REAGAN
Attorney at Law
1550 South West Temple
Salt Lake City, Utah 84115
Telephone: 487-4158 or 487-4159

plaintiff to the extent of causing her great mental distress and there appears to be no chance of reconciliation of the parties.

5. That the parties hereto have entered into a Stipulation, in writing, which Stipulation has been filed in open Court, and the Court finds that all the provisions of said Stipulation are fair and equitable.

From the foregoing facts, the Court now makes and files it

CONCLUSIONS OF LAW

1. That a decree of divorce should be entered in favor of the plaintiff, provided, that said decree should include a provision that it shall not become absolute until the expiration of three (3) months from the date of entry thereof.

2. That the parties have acquired no real property during their marriage and have incurred no bills or obligations as husband and wife. That all personal property has been equitably distributed between the parties.

3. That the plaintiff has employed William K. Reagan, Esquire, to represent her in this action.

4. That the Court should award no alimony or child support from the defendant past, present or future.

5. That the Court should require the defendant to give up any right or claim he may have to the expected child and grant irrevocably his consent to the child's adoption by another party.

6. That the Court should require the defendant to pay for all attorney's fees and costs incurred in this action.

DATED this ____ day of May, 1974.


DISTRICT COURT JUDGE

ATTEST
W. STERLING EVANS
CLERK
BY 

WILLIAM K. REAGAN
Attorney at Law
1550 South West Temple
Salt Lake City, Utah 84115
Telephone: 487-4158 or 487-4159

WILLIAM K. REAGAN
Attorney for Plaintiff
1550 South West Temple
Salt Lake City, Utah 84115
Telephone: 487-4158

APR 30 1974

W. C. REAGAN
W. C. Reagan

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE COUNTY
STATE OF UTAH

SUSAN WOODWARD FIELDS,)	
Plaintiff,)	<u>STIPULATION AND AGREEMENT</u>
vs.)	
CARLOS LEON FIELDS,)	No. D 13163
Defendant.)	

WHEREAS, the plaintiff above named has heretofore commenced an action for divorce in the above entitled Court against the above named defendant;

AND, WHEREAS, the parties hereto are desirous of stipulating a settlement of and concerning their property rights and claims for alimony;

NOW, THEREFORE, it is hereby stipulated and agreed by and between the parties hereto, in the event the Court shall grant a decree of divorce, and subject to the approval of the Court, as follows:

1. That the Court may award to the plaintiff a decree of divorce.
2. That the Court may award to the plaintiff the care, custody and control of the expected child.
3. That the Court may require the defendant to pay for all attorney's fees and costs incurred in this action.
4. That the Court may require the defendant to give up any right or claim he has or may have to the expected child and that the Court may require the defendant to grant irrevocably his consent to the expected child's adoption by another party.
5. That the Court may require the plaintiff to waive any and all right for alimony and child support from the defendant past, present and future.
6. That the parties hereto have acquired no real property during their marriage and have incurred no bills or obligations as husband and wife. That all personal property has been equitably distributed between the parties.
6. That the parties hereto believe the foregoing is an equitable settlement of their property rights and all claims or demands which either of

WILLIAM K. REAGAN
Attorney at Law
1550 South West Temple
Salt Lake City, Utah 84115
Telephone: 487-4158 or 487-4159

said parties has or might have against the other and desire that the stipulations contained in this agreement, in substance and effect, be incorporated in any decree of divorce which may be awarded by the Court in these proceedings.

DATED this 15 day of March, 1974.

William K. Reagan
PLAINTIFF

Carlos Leon Fields
DEFENDANT

Jan 27 1978

W. STEPHEN EVANS
CLERK
DEPUTY CLERK

R. PAUL VAN DAM, SALT LAKE COUNTY ATTORNEY
By: J. Denis Kroll, Deputy County Attorney
Attorneys for plaintiffs
243 East Fourth South, Lower Level
Salt Lake City, Utah 84111
Telephone: 535-5333

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

SUSAN WOODWARD FIELDS and the
STATE OF UTAH, by and through
Utah State Department of
Social Services,

Plaintiffs,

-v-

CARLOS LEON FIELDS,

Defendant.

ORDER TO SHOW CAUSE IN
RE MODIFICATION OF DIVORCE
DECREE

Civil No. D 13163

TO THE ABOVE NAMED DEFENDANT:

You are hereby ordered to appear before the above-entitled Court in the City & County Building, 200 East 400 South, Salt Lake City, Utah before the Honorable Stewart Hanson, Sr., on Wednesday, the 16th day of August, 1978 at the hour of 10:00 a.m., then and there to show cause, if any you have, why the child support provision of the divorce decree entered in the above matter on the 7th day of June, 1974 should not be modified to include the sum of One hundred fifty dollars (\$150.00) per month for the support of your minor child, Seth Andrew Fields. That the Order referred to and request for modification are more fully described in the Affidavit of the counsel for the Utah State Department of Social Services, a copy of which is attached hereto and incorporated by reference herein.

Dated this 27 day of June, 1978.

Defendant's address:
Box 41
Nettie, West Virginia

JUDGE

ATTEST
W. STEPHEN EVANS
CLERK
Deputy Clerk

AUG 23 11 49 AM '78

R. PAUL VAN DAM, SALT LAKE COUNTY ATTORNEY
 By: J. Denis Kroll, Deputy County Attorney
 Attorneys for plaintiffs
 243 East Fourth South, Lower Level
 Salt Lake City, Utah 84111
 Telephone: 535-5333

BY: *[Signature]* CLERK
 DEPUTY CLERK

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
 IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

SUSAN WOODWARD FIELDS and the
 STATE OF UTAH, by and through:
 Utah State Department of
 Social Services,

Plaintiffs,

-v-

CARLOS LEON FIELDS,
 Defendant.

O R D E R

Civil No. D 13163

Plaintiff's Order to Show Cause came on regularly for hearing on the 16th day of August, 1978 at the hour of 10:00 a.m. before the Honorable Stewart Hanson, Sr., the plaintiffs being represented by J. Denis Kroll, Deputy County Attorney, and the defendant not appearing in person nor being represented by counsel, and testimony having been given and the Court being fully advised in the premises,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. That commencing August, 1978 the defendant shall pay the sum of One hundred fifty dollars (\$150.00) per month for continuing child support for his minor child, Seth Andrew Fields.

2. That so long as co-plaintiff continues to receive public assistance from the State of Utah, said monies shall be made payable to the Office of Recovery Services, P.O. Box 2500, Salt Lake City, Utah 84103.

Dated this 23rd day of August, 1978.

BY THE COURT:

ATTEST
[Signature]
 Deputy Clerk

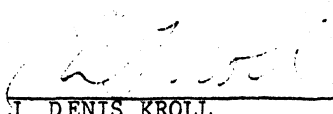
[Signature]
 JUDGE

MAILING CERTIFICATE

This is to certify that I have mailed a true and exact

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copy of the foregoing Order to the Defendant at Box 41,
Nettie, West Virginia, this 22nd day of August, 1978.



J. DENIS KROLL
Deputy County Attorney

FEB 27 2 07 PM '64

Linda Simpson

STATE OF UTAH

SUSAN WOODWARD FIELDS,)
)
 Plaintiff,) MOTION FOR WRIT OF ERROR
)
 vs.) AND
)
 CARLOS LEON FIELDS,) FOR REIMBURSEMENT OF FUNDS PAID
) WELFARE DEPARTMENT
 Defendant.)
)
) AND
)
) NOTICE
)
)
) Civil No. D 13163

Defendant (father) moves the court to:

1. Terminate and vacate child support order dated 8-23-78, and consequent judgment and order of support, copy attached, undated, Department of Social Services case number 30015746R1 and consequent garnishments in aid of same; also

2. Various stipulations, example that attached, and wage assignment dated 2-3-82, copy attached; and

3. Ordering reimbursement of sums paid Department of Social Services; and

4. Making such other orders as appropriate;

Alleging as follows:

5. Defendant was sued for divorce on the complaint, copy attached which demanded:

- a. Asking no support and waiving same,
- b. That defendant relinquishing any claim to expected child,
- c. That defendant irrevocably consent to adoption; and

6. By Stipulation, copy attached, parties agreed, not what would be the result but what the Court might do -

d. "May require the defendant to give up any right or claim he has or may have to the expected child...."

e. "...may require the plaintiff to waive any and all right for alimony and child support from the defendant past, present and future."; and

7. After hearing, the Court, by Decree and Findings dated 5-7-74, copy attached, ordered:

a. The defendant "be and he hereby is required to give up any right or claim he may have to the expected child, and grant irrevocably his consent to the child's adoption by another party" and

b. The Court "awards no alimony or child support from the defendant past, present or future"; and

c. (prescribed no conditions as to adoption nor revelation or intimation as to status of any plans or contemplation for such.

8. Defendant mentally and emotionally reconciled himself to, and adjusted to, the foregoing situation and result and in all ways changed his position in confidence and reliance thereupon.

9. Never interfering with the disposition nor questioning the finality of the separation thus decreed, not enjoying the association which might have resulted had not the complete severance been decreed.

10. Dated 6-17-78, four years later, the Social Services effected an order seeking to modify to require support.

11. The Social Services pursued this in California, thence in West Virginia, which order was dismissed, copy attached, dated 8-9-78, and possibly raise adjudicata as to the merits.

12. An Order to Show Cause in Utah was thereafter served and noticed.

13. Defendant, out of state at the time, made efforts bordering on heroics to gain representation and presence in court (see Exhibits to) failed and 8-23-78 an Expart Order, copy attached, was effected.

14. Between and 1982 defendant was coerced by garnishments, threats of garnishments, implied intimation that his debt would be greater and include support monies prior to 1-1-81, into signing stipulation for wage assignment on sums allegedly owing after 1-1-81.

15. Defendant paid some \$2,000; became delinquent thereunder and now suffers wage garnishment and wage assignment (temporarily suspended at courtesy of counsel for the State to allow for this reassessment).

16. State's position rests largely on the Hills case, Hills v Hills, October 1981, Utah 638 Pac 2nd 517, holding that -

a. Parents' stipulation at time of divorce for no support, did not terminate father's parental obligations and

b. Termination of parental duties can not be validly decreed without hearing, evidence, etc.

17. The case is not only distinguishable, but inapplicable because

a. The stipulation did not terminate rights, in fact quite the opposite, providing for reversion of custody to the father in event of change of custody;

b. No indication of hearing on the question;

c. Was accomplished by stipulation simply incorporated into the decree;

d. The Court noting "there was no such hearing..." and

e. By intimation that there was a lack of "careful judicial consideration of all of the interests involved..."

18. In the instant case the Court made the determination, not the parties, there was a hearing, there was no "reversion" of custody as in the Hills case, there was what appeared to be a hard and fast not only severance but denial of parental rights (text of Hills case attached).

19. Defendant (father) relies on many cases, notably recent case, Nevada Welfare Division v Vine, 1983 Nevada, 662 Pac. 2nd 295, U. S. Supreme Court 83-97 Certiorari denied 11-7-83 (certiorari was sought by the Welfare Department from Nevada Supreme Court Decision which, under similar uresa

action that -

Order terminating former husband's parental rights also completely extinguished all of his legal duties and responsibility with respect to his daughter.

That was a weaker case than the instant case.

By Divorce Decree 8-26-74, custody was awarded to wife and the father ordered to pay \$50 per month support; and 7-15-75 (a year later) an order was made "terminating all parental rights of John Michael Vine with respect to Amanda Lee Vine, be, and they are hereby terminated and said child is declared free from any and all custody and control of said John Michael Vine." The Supreme Court noted, page 296:

"Martha Jo Vine received sole parental rights over her daughter."

There was the "representation of Mrs. Vine's attorney that the termination order would cut off his support obligation." Six years later, 6-12-81, State of Nevada filed under the Revised Uniform Reciprocal Enforcement of Support Act seeking alleged past and future support.

The Court noted, among other things, including the "reliance" that -

"...all parties and the Court understood and intended that the order would terminate in all respects the parental relationship..."

The Court quoted Roelfs v Walingford, Kansas 1971 486 Pac 2nd 13 for a statute similar to NRS 128.110 (see text of Vine case attached) where the Kansas Supreme Court upheld the lower Court's cutting off all, not only "rights" but "obligations".

The Nevada Supreme Court noted, Arguendo page 298, that -

"Complete severence of the relationship removes all connections which may otherwise engender feelings of continuing attachment or right and gives the child an unrestrained opportunity to prepare for a new home environment."

Citing Anguis v Superior Court, 1967 Arizona, 429 Pac 2nd 702, construing, "parental rights" as including rights and obligations, noting -

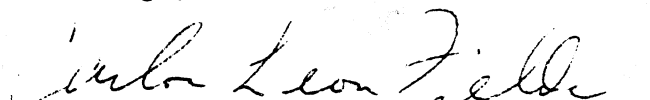
"In other words, we construe parental rights to include both parental rights and parental obligations."


CARLOS LEON FIELDS


GAYLE DEAN HUNT, Attorney for Defendant

STATE OF UTAH)
 : ss
County of Salt Lake)

Carlos Leon Fields being duly sworn deposes and says that he has read and is familiar with the foregoing petition and that the contents thereof are true to the best of his knowledge, information and belief.


CARLOS LEON FIELDS

Subscribed and sworn to before me on this 17th day of February, 1984.

Gayle Dean Hunt
NOTARY PUBLIC

Residing in Salt Lake County, Utah

My commission expires:

Jan 26 1988

NOTICE

The above motion will be called for argument and disposition
before Hon. _____ on March _____, 1984, at _____ o'clock
P.M.

DATED this _____ day of February, 1984.

Gayle Dean Hunt, Attorney for Defendant

I mailed a copy of the foregoing on February 16, 1984, to the
following:

Paul Isaacson
Attorney for State of Utah
Department of Social Services
3195 South Main Street
Salt Lake City, Utah 84115

Phone: 486-1812

Gayle Dean Hunt

County of Salt Lake - State of Utah

FILE NO. D-13163

TITLE: (✓ PARTIES PRESENT)

COUNSEL: (✓ COUNSEL PRESENT)

SUSAN WOODWARD FIELDS

-VS-

CARLOS LEON FIELDS

GAYLE DEAN HUNT

CLERK

HON. COMM. SANDRA PEULER

REPORTER

DATE: 3/9/84

BAILIFF

Defendant's motion to terminate and vacate the prior support order having been fully argued by respective counsel, and the commissioner having further reviewed the file, now recommends as follows: that defendant's motion should be denied.

This recommendation is based upon the following findings:

(1) That this Court previously entered an order modifying the divorce decree, and ordered defendant to pay \$150.00 per month as support for the minor child. Said order was entered August 23, 1978, and no appeal was taken therefrom.

(2) In November 1981, defendant brought

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TITLE: (✓ PARTIES PRESENT)

COUNSEL: (✓ COUNSEL PRESENT)

SUSAN WOODWARD FIELDS

-VS-

CARLOS LEON FIELDS

GAYLE DEAN HUNT

CLERK

HON. COMM. SANDRA PEULEY

REPORTER

DATE: 5/9/84

BAILIFF

motion to set aside the 1978 order, which was denied. Defendant appealed that order, but subsequently dismissed his appeal.

(3) Defendant then stipulated with the office of recovery services to pay the support, and entered into a voluntary wage assignment to make those payments.

Based upon the above findings, the Commissioner concludes that defendant's motion should be denied.


Counsel should advise if a special setting is necessary.

Sandra Peuley

TED CANNON,
Salt Lake County Attorney
By: Sandy Mooy,
Deputy County Attorney
3195 South Main Street
P.O. Box 15450
Salt Lake City, Utah 84115-0450
Telephone: 483-6333

FILED IN CLERK'S OFFICE
Salt Lake County, Utah

MAR 1 1985

H. Dennis Frederick, District Court
By  Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT,
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

SUSAN WOODWARD FIELDS AND THE)
STATE OF UTAH, BY AND THROUGH)
UTAH STATE DEPARTMENT OF SOCIAL)
SERVICES,)

ORDER

Plaintiffs,)

Vs.)

Civil No. D 13163

CARLOS LEON FIELDS,)

Defendant.)

This matter came on for hearing before the Honorable J. Dennis Frederick, the 25th day of February, 1985. The State of Utah appeared through counsel, Sandy Mooy, the Defendant appeared through counsel, Gayle Dean Hunt. The Court considering Defendant's Motion for Writ of Error and Reimbursement of Funds and after receiving argument of counsel and good cause appearing, it is hereby

ORDERED that the Defendant's Motion for Writ of Error is hereby denied and the recommendations made by Commissioner Sandra Peuler made the 9th of May, 1984, being affirmed by the Court.

DATED this 1st day of March, 1985.


J. DENNIS FREDERICK, JUDGE

I hereby certify that I mailed a copy of the foregoing Order to Gayle Dean Hunt, Attorney for Defendant, at 2121 South State, Salt Lake City, Utah 84115 this 28th day of February, 1985.



FILED IN CLERK'S OFFICE
SALT LAKE COUNTY, UTAH

MAR 28 2 41 PM '85

GAYLE DEAN HUNT
Attorney for Defendant
2121 South State Street
Salt Lake City, Utah 84115
Telephone: 486-8701

CLERK
Gayle Dean Hunt
CLERK

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

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35589

SUSAN WOODWARD FIELDS and)
THE STATE OF UTAH, BY AND THROUGH)
THE UTAH STATE DEPARTMENT OF)
SOCIAL SERVICES,)

Plaintiffs,

vs.)

CARLOS LEON FIELDS,)

Defendant.)

NOTICE OF APPEAL

CIVIL NO. D 13163

Defendant Carlos Leon Fields hereby Appeals to the Supreme Court
from Order dated March , 1985 in the above action, Hon. J. Dennis Frederi
Judge.

Dated March 27, 1985.

Gayle Dean Hunt

GAYLE DEAN HUNT, Attorney for Defend

I mailed a copy of the foregoing on March 27, 1985 to the followi

Ted Cannon
Salt Lake County Attorney
By: Sandy Mooy
Deputy County Attorney
231 East 400 South, Suite 400
Salt Lake City, Utah 84111
Telephone: 363-7900

Ted Cannon

GAYLE DEAN HUNT
ATTORNEY AT LAW
2121 SOUTH STATE
SALT LAKE CITY,
UTAH 84115
TEL: 486-8701